U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

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May 10, 2007

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Highways and Transit

FROM: Subcommittee on Highways and Transit Staff

SUBJECT: Hearing on The Federal Transit Administration's Implementation of the New Starts and Small Starts Programs

PURPOSE OF HEARING

The Subcommittee on Highways and Transit is scheduled to meet on Thursday, May 10, 2007 at 10:00 a.m., to receive testimony on the Federal Transit Administration's (FTA) implementation of the New Starts and Small Starts provisions of the Capital Investment Grants program. The Subcommittee will hear from officials of FTA, U.S. Government Accountability Office (GAO), Los Angeles County Metropolitan Transportation Authority (LA Metro), Dallas Area Rapid Transit (DART), Interurban Transit Partnership of Grand Rapids (The Rapid), Portland Streetcar, Inc., and the Senior Vice President of HDR Decision Economics, Inc.

BACKGROUND

The Capital Investment Grants program, codified at 49 U.S.C. 5309, is the Federal government's primary mechanism for supporting locally planned, implemented, and operated transit capital investments. From commuter rail to light rail transit, from streetcars to bus rapid transit (BRT), transit investments improve the mobility of millions of Americans, help to reduce congestion and improve air quality in the areas they serve, and foster the development of more economically viable, safe, and livable communities.

Congress created this discretionary transit grant program in the Urban Mass Transportation Act of 1964 (UMTA) "to provide additional assistance for the development of comprehensive and coordinated mass transportation systems." Several program categories exist within the Capital Investment Grants program: the fixed guideway modernization program, the discretionary bus and bus facilities program, and both the New Starts and Small Starts programs.

The New Starts program (initially known as the UMTA Section 3 Program), is one of the oldest categories of capital transit grants. Designed to fund major investments in the transit infrastructure of urbanized areas, the New Starts program has helped to make possible dozens of new rail transit fixed guideway systems across the country. A new fixed guideway project is a minimum operable segment of a new fixed guideway or an extension to an existing fixed guideway system. Transit project sponsors seeking more than $75,000,000 in Federal New Starts funds must apply to FTA under the New Starts program criteria at 49 U.S.C. 5309(d). In general, the New Starts program contains more justification criteria, grant requirements, and detailed FTA review than any other category of capital investment grants.

The Small Starts program, the newest category of capital transit grants, was created in 2005 by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Transit project sponsors seeking less than $75,000,000 in Federal Small Starts funds for a project with a total estimated net capital cost of less than $250,000,000 may apply to FTA under the Small Starts program criteria at 49 U.S.C. 5309(e). The Small Starts program is designed to include fewer project justification criteria and grant requirements, allowing for a more simplified FTA review.

Basic Statutory Requirements of the New Starts and Small Starts Programs

Both New Starts and Small Starts projects may be approved for Federal funding only if they meet three basic requirements. For a New Starts project, the selection criteria are as follows:

1. The project must be based on the results of an alternative analysis and preliminary engineering.
2. The project must be justified based on a comprehensive review of its mobility improvements, environmental benefits, cost effectiveness, operating efficiencies, economic development effects, and public transportation supportive land use policies and future patterns.
3. The project must be supported by an acceptable degree of local financial commitment.

For a Small Starts project, the selection criteria are as follows:

1. The project must be based on the results of planning and alternative analysis.
2. The project must be justified based on a review of its public transportation supportive land use policies, cost effectiveness, and effect on local economic development.
3. The project must be supported by an acceptable degree of local financial commitment.

Of the three basic requirements of both the News Starts and Small Starts programs, the project justification criteria receive by far the most attention in the statute. Congress has included these specific justification criteria for FTA to analyze, evaluate and consider in each application for a New Starts or Small Starts grant. FTA, however, is not currently incorporating all of the congressionally mandated project justification criteria into either the New Starts or Small Starts evaluation process, especially the economic development criterion. A more detailed review of the evolution of the New Starts and Small Starts program criteria and FTA's implementation of those programs follows.

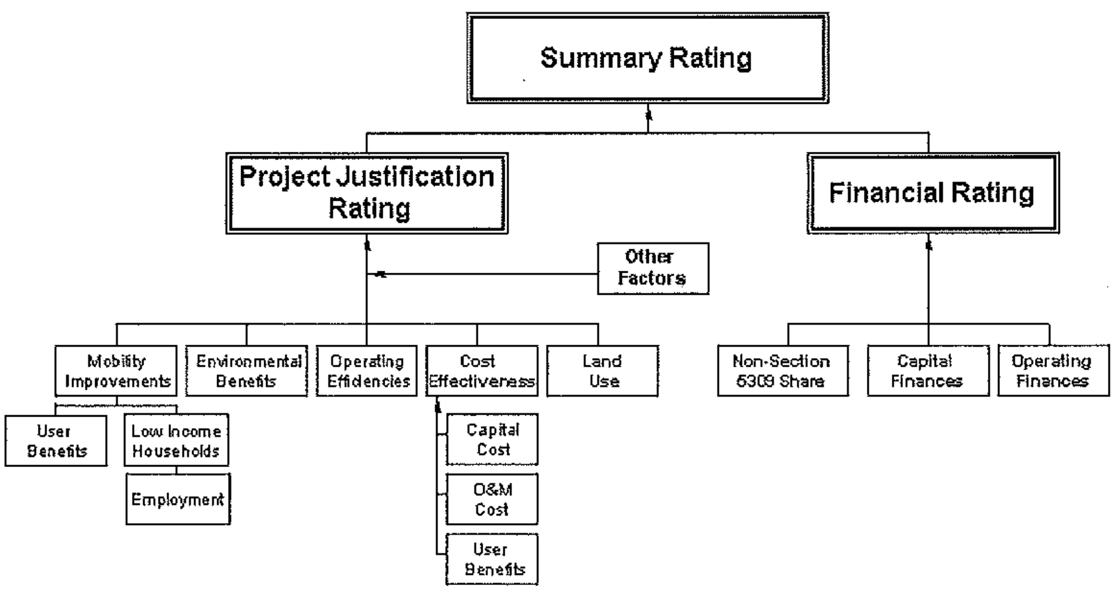
Evolution of New Starts and Small Starts Project Justification Criteria

Statutory criteria for evaluating New Starts projects first appeared in the Surface Transportation Uniform and Relocation Assistance Act of 1987 (STURAA). This Act established a set of statutory criteria that New Starts projects had to meet to be eligible for Federal grants. Congress established that a wide range of public transportation alternatives must be considered in the planning, or alternatives analysis, process. Congress also directed that projects be cost-effective and supported by an adequate degree of local financial commitment.

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) made important changes to the New Starts program by requiring the consideration of additional project justification criteria. Specifically, Congress directed that mobility improvements, operating efficiencies and environmental benefits be taken into account – along with cost-effectiveness – when determining a New Starts project's justification. The Transportation Equity Act for the 21st Century (TEA-21) reauthorized these four project justification criteria, keeping the multiple-measure method of project evaluation intact.

Congress made the most recent changes to the evaluation process in SAFETEA-LU. For the New Starts program, two new factors were added to the list of required project justification criteria: economic development effects and public transportation supportive land use policies and future patterns. Thus, FTA is directed to conduct a comprehensive review of all six New Starts project justification criteria. Following is Figure I-1 from FTA's FY 2008 Annual Report on New Starts which demonstrates FTA's current New Starts evaluation and rating framework:

The FTA New Starts Evaluation and Rating Framework



In creating the Small Starts program, Congress created three justification criteria – public transportation supportive land use policies, cost effectiveness, and effect on local economic development – all of which FTA was directed to review.

FTA's Implementation of the Economic Development Criterion for New Starts and Small Starts Projects

SAFETEA-LU required FTA to issue policy guidance regarding changes to the New Starts program, and also required FTA to issue an Impact Report on the methodology to be used in evaluating the land use and economic development impacts of non-fixed guideway or partial fixed guideway Small Starts projects. These guidance and reporting requirements included deadlines which FTA did not meet. In addition, FTA failed to submit an Impact Report and instead issued a letter which stated, "Predicting economic development impacts of transit improvements – particularly the types of improvements anticipated to be funded through the Small Starts program – is a particular challenge."

Eventually, FTA did issue policy guidance for New Starts and Small Starts, though that guidance failed to incorporate economic development factors into the overall project justification rating. In its January 2006 guidance on New Starts, FTA stated, "In response to SAFETEA-LU, FTA might add an economic development criterion…" but in its May 2006 Final Guidance on New Starts, FTA stated that it "will not change the current framework and methodology for evaluating and rating New Starts projects," and encouraged project sponsors to "submit information on anticipated economic development of their proposed investments as an 'other factor'." Some in the transit community submitted comments to the FTA docket on this issue, reiterating their strong opinion that economic development factors should be evaluated as a separate and equal project justification criterion as contemplated by the statutory language in SAFETEA-LU.

In its Interim Guidance on Small Starts, FTA stated that until the issuance of a final rule, the Small Starts Evaluation framework and measures will be consistent with the framework established for evaluating New Starts. Because FTA has not issued a Notice of Proposed Rulemaking "NPRM" to date for either New Starts or Small Starts, the policy guidance issued by the FTA stands as its current position on those programs. As such, neither transit grant program is being fully implemented as Congress directed in SAFETEA-LU.

FTA's Implementation of the Cost-Effectiveness Justification Criterion for New Starts and Small Starts Projects

SAFETEA-LU directed that each New Starts and Small Starts project justification factor be rated on a five-point scale including high, medium-high, medium, medium-low, and low designations. Although the statute does not direct FTA to weigh one project justification factor more heavily than any other, FTA has historically weighted the cost-effectiveness factor more heavily than the other project justification criterion when evaluating overall project justifications, and has continued this practice even after passage of SAFETEA-LU. In its Annual Report on Funding Recommendations for FY 2008, FTA states that cost-effectiveness comprises 50 percent of the project justification rating.

The practice of weighting cost-effectiveness more heavily compared to the other statutory justification criteria was first formally announced in a March 9, 2005 Dear Colleague letter from then-Administrator Jennifer L. Dorn who wrote, "as a general practice, the Administration will target its funding recommendations in FY 2006 and beyond to those proposed New Starts projects able to achieve a medium or higher rating for cost-effectiveness." Although a significant number of respondents to the letter suggested that implementation of any policy changes be delayed until after the then-pending surface reauthorization has been passed and/or a formal rulemaking is concluded, FTA stated in the April 29, 2005 follow-up Dear Colleague on the issue, "we do not believe that such a delay is either necessary or advisable." Thus, FTA's general practice is not to advance any project unless it receives at least a medium rating on the single cost-effectiveness rating, regardless of the ratings it receives on any of the other project justification criteria.

Although the Dear Colleague on cost-effectiveness was written before SAFETEA-LU created the Small Starts program, FTA has indicated that it will apply the Administration's policy of favoring cost-effectiveness in the Small Starts program as well. In an April 2007 letter to a project sponsor seeking a Small Starts grant, FTA stated, "The Administration recommends Section 5309 New Starts and Small Starts funding only for projects that earn a rating of *Medium* or better for cost-effectiveness."

FTA's Proposal to Eliminate the Operating Efficiencies and Environmental Benefits Justification Criteria for New Starts Projects

In its most recently published proposed guidance on New Starts policies (February 2007), FTA proposes to no longer require the submission of information on operating efficiencies and environmental benefits. FTA claims that locally-generated and reported information in support of these two criteria does not distinguish, in any meaningful way, the differences between competing transit capital investments. In addition, FTA admits that it "has not factored the ratings assigned to these two criteria into a project's "project justification" rating for several years." In light of the fact that SAFETEA-LU continued to direct FTA to evaluate and rate both operating efficiencies and environmental benefits as part of the overall project justification rating of all New Starts projects, this recent proposal by FTA has raised both Congressional and transit industry concern.

FTA's Implementation of the Local Financial Commitment Criteria

Similar to projects seeking Federal funds from various highway programs, projects seeking Federal transit grants are limited by the maximum government share allowed under the statue. 49 U.S.C. 5309(h) requires that the government's share of a grant for transit capital investments "shall be for 80 percent of the net capital project cost, unless the grant recipient requests a lower grant percentage." Nevertheless, Congress was concerned that project sponsors felt pressure to seek far less than the allowable federal share. In order to address these concerns, SAFETEA-LU included language to ensure that nothing in the Act shall be construed as authorizing FTA to require a non-Federal financial commitment for a project that is more than 20 percent of the net capital project cost.

FTA, however, has long pursued a policy of encouraging New Starts project sponsors to dramatically increase the local share of the net project cost. In the February 2007 guidance on New Starts and Small Starts policies, FTA proposes to extend this policy to the Small Starts program by adding a rule that projects requesting no more than a 50 percent Small Starts share be given a "high" rating, and those requesting between 50 percent to 80 percent share receive no less than a "medium" rating. As justification for this policy, FTA cites the demand for funding under the New Starts program which has been far in excess of the authorized funding. FTA states that it expects this same trend of increasing demands to play out in the Small Starts program as well.

Additional Characteristics of the Small Starts Program

Project Eligibility

When creating the eligibility criteria for the new Small Starts program, Congress sought to strike a balance between proponents of streetcars and BRT in defining the term "fixed guideway capital project". While streetcars fit under the general definition of fixed guideway in section 5302(a)(4), some BRT projects that are not wholly within a dedicated right-of-way arguably do not. As such, the Small Starts program includes a broader definition of fixed guideway capital projects to ensure eligibility for all modes. To be eligible for the Small Starts program, a project sponsor must demonstrate either that a substantial portion of the project operate in a separate right-of-way dedicated for public transit use during peak hour operations, or, that the project represent a "substantial investment" in a defined corridor.

The Very Small Starts Program

Until the passage of SAFETEA-LU, transit project sponsors seeking less than $25,000,000 in Federal New Starts funds were exempt from the Capital Investment Grants program evaluation process. Under SAFETEA-LU, this exemption continues only until FTA issues regulations establishing an evaluation and rating process for the Small Starts program. FTA is currently in the process of undertaking this rulemaking, but the agency does not contemplate its completion until early 2008. In the meantime, FTA has issued guidance on the Small Starts program in which it proposes to create another category of Capital Investment Grants which it has named the "Very Small Starts" program.

In its August 2006 Final Interim Guidance for Small Starts, the FTA stated that to be eligible for the Very Small Starts category, the project should meeting the following criteria: (1) have substantial transit stations; (2) use traffic signal priority/pre-emption, to the extent, if any, that traffic signals exist in the corridor; (3) have low-floor vehicles or level boarding; (4) use a clear brand identity for the proposed service; (5) operate 10 minute peak/15 minute off peak headways or better and operate at least 14 hours per weekday (not required for commuter rail or ferries); (6) be in corridors with at least 3,000 average weekday existing riders who will benefit from the proposed project; and (7) have a total capital cost less than $50 million (including all project elements) and less than $3 million per mile, exclusive of rolling stock. Additional program criteria and procedure will be established by FTA upon the issuance of its anticipated Notice of Proposed Rulemaking.

FTA's Inclusion of Outsourcing and Congestion Pricing Factors into the New Starts and Small Starts Programs

Another new proposal announced by FTA in its February 2007 guidance is its intention to include both outsourcing and congestion pricing factors into the New and Small Starts programs. Specifically, FTA is proposing to provide a ratings bonus to a project sponsor who "can demonstrate it has provided the opportunity for the operation and maintenance of the project to be contracted out." Further, FTA proposes to increase the project justification rating of a New or Small Start project that is a "principal element of a congestion management strategy, in general, and a pricing strategy, in particular." Neither of these changes in the recent FTA proposed guidance is based on the statutory language of 49 U.S.C. 5309, but rather, FTA notes that their proposal "supports the congestion initiative of the Secretary of Transportation, which is to promote strategies that reduce highway congestion."

<u>PREVIOUS SUBCOMMITTEE ACTION</u>

The Subcommittee on Highways and Transit last held a hearing on the New Starts program on June 20, 2002, and the subcommittee has never held a hearing on the Small Starts program. The focus of the 2002 hearing was on the benefits and the changes needed to the Federal Transit Capital Grants Program.

WITNESS LIST

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